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January 25, 2001

VIA TELECOPY AND CERTIFIED MAIL
/RETURN RECEIPT REQUESTED

CLIENT COPY

Dr. Timothy Fields, Jr.
Assistant Administrator
Office of Solid Waste & Emergency Response
USEPA Headquarters, Mail Code 5101
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: National Priorities List for Uncontrolled Hazardous
Waste Sites, Proposed Rule No. 34 (Lower Duwamish
Waterway)

Dear Dr. Fields:

This letter is submitted on behalf of Tytanic LLC ("Tytanic") and Long Painting Company ("Long Painting") in connection with the above-referenced rulemaking proposal which was placed in the Federal Register by the U.S. Environmental Protection Agency ("EPA") on December 1, 2000. See 65 Fed. Reg. 72515. Tytanic and Long Painting hereby restate and ask EPA to reconsider their request for a 90-day extension to the comment period which EPA has proposed to close on January 30, 2001.

Tytanic and Long Painting are potentially affected property and business owners located along the Lower Duwamish Waterway. As such, they are very interested in EPA's proposal to place approximately six miles of the Waterway on the National Priorities List ("NPL"). The U.S. Court of Appeals for the D.C. Circuit has explicitly recognized that EPA's "decision to list a site [on the NPL] may have severe

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consequences for affected parties" Board of Regents of the University of Washington v. EPA, 86 F.3d 1214, 1217 (D.C. Cir. 1996).

On January 16, 2001, Mrs. Anne L. Long, Manager for Tytanic sent you a letter requesting a 90-day extension to the January 30, 2001 comment deadline. Mr. Mike Cassidy, President of Long Painting, submitted a similar letter requesting the same extension on January 19, 2001. In their letters, Mrs. Long and Mr. Cassidy pointed out that EPA's supporting documentation for listing the Lower Duwamish Waterway consists of more than 6,000 pages of highly technical and complex information assembled by EPA over a number of years. They also described other instances in which EPA had granted 60-90 day extensions to the minimum 60-day comment period required for NPL rulemaking proposals. Because the NPL proposal for the Lower Duwamish Waterway was issued just before the onset of the year-end holidays, Tytanic and Long Painting did not become aware of EPA's proposed rulemaking and were unable to obtain the Documentation Record ("DR") and the four CD-ROMs that contain the DR's 31 reference documents until earlier this month.

Given the voluminous quantity of technical data that must be reviewed and evaluated, Tytanic and Long Painting retained an environmental consultant, Kiawah Consulting Group LLC ("Kiawah"), to assist them. Kiawah's preliminary review of the DR and its 31 reference documents contained on the four CD-ROMs indicates that significant portions of the supporting record are incomplete, illegible and/or confusing. For example, DR Reference 17, which is a Summary Report prepared by Parametrix, Inc., dated July 17, 1998, and entitled "Combined Sewer Overflow Water Quality Assessment for the Duwamish River and Elliott Bay," does not include any of the three other volumes nor the 13 appendices that are identified in the Table of Contents and described as accompanying the Summary Report. These additional documents appear to include significant technical and policy materials that help explain the Summary Report.

Moreover, the important and extensive Map Folio in Reference 4 of the DR is nearly illegible and very confusing due to its small scale and because the original color format is reproduced as black and white on the CD ROM. Another example of the confusing nature of EPA's supporting record is the reference in the second paragraph of page 44 of the DR which states, "[p]roperty owners for land adjacent to the waterway between RK 2.5 and 10.8 are provided in Reference 4 pages 990 through 995." After much searching and finally calling EPA's Region 10 office, it was discovered that the property owners are actually identified on pages 993-998 of the Map Folio file which is not included as part of Reference 4 on the CD-ROM. Despite these and other problems associated with the mountain of documentation that EPA is asking small businesses such as Tytanic and Long Painting to review, evaluate and comment upon in less than 60 days. On January 19, 2001 Mr. Simmons was advised by Robert Myers of EPA's Headquarters



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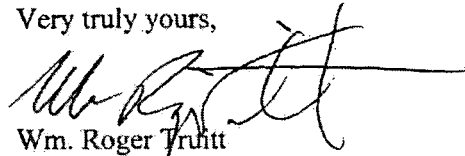
office that the agency would not grant Tytanic's request for an extension to the comment period.

On January 20, 2001, Andrew H. Card, Jr., the Assistant to and Chief of Staff for President Bush issued a memorandum to all federal agencies on behalf of the President. This memorandum, which was subsequently published in the Federal Register on January 24, 2001 (66 Fed. Reg. 7701) and is enclosed, directs all agencies to send no proposed or final regulation to the Office of the Federal Register unless and until the agency head (or the agency head's designee) appointed by President Bush has reviewed and approved the regulatory action. Because a new EPA Administrator has not been confirmed and the December 1, 2000 proposal to place the Lower Duwamish Waterway on the NPL is one of dozens of EPA regulatory actions that will require review by the new Administrator, there is no apparent need to close the comment period on January 30, 2001.

In view of the problems associated with EPA's record supporting its proposal to place the Lower Duwamish Waterway on the NPL and Mr. Card's January 20 memorandum, Tytanic and Long Painting hereby request EPA to reconsider its earlier determination (as orally communicated to Mr. Simmons on January 19, 2001) not to extend the comment period for the above-referenced proposal rule for an additional 90 days.

Please advise Mr. Simmons and me of EPA's final determination of this matter as soon as possible, but not later than 12:00 noon on Monday, January 29, 2001.

Very truly yours,



Wm. Roger Truitt

WRT/cks
Enclosure

cc: Mr. Andrew H. Card, Jr. (via Certified Mail)
Ms. Yolanda Singer (via telecopy w/enclosure)
Docket Coordinator (via Certified Mail w/enclosure)
Mr. Robert Myers (via telecopy w/enclosure)
Mr. Steve Simmons
Mrs. Anne L. Long
Mr. Michael Cassidy

THE WHITE HOUSE
WASHINGTON

January 20, 2001

MEMORANDUM FOR THE HEADS AND ACTING HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

FROM: ANDREW H. CARD, JR. *Andrew H. Card, Jr.*
Assistant to the President
and Chief of Staff

SUBJECT: Regulatory Review Plan

The President has asked me to communicate to each of you his plan for managing the Federal regulatory process at the outset of his Administration. In order to ensure that the President's appointees have the opportunity to review any new or pending regulations, I ask on behalf of the President that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency or other urgent situations relating to health and safety, send no proposed or final regulation to the Office of the Federal Register (the "OFR") unless and until a department or agency head appointed by the President after noon on January 20, 2001, reviews and approves the regulatory action. The department or agency head may delegate this power of review and approval to any other person so appointed by the President, consistent with applicable law.
2. With respect to regulations that have been sent to the OFR but not published in the Federal Register, withdraw them from OFR for review and approval as described in paragraph 1, subject to exception as described in paragraph 1. This withdrawal must be conducted consistent with the OFR procedures.
3. With respect to regulations that have been published in the OFR but have not taken effect, temporarily postpone the effective date of the regulations for 60 days, subject to exception as described in paragraph 1.

4. Exclude from the requested actions in paragraphs 1-3 any regulations promulgated pursuant to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.
5. Notify the OMB Director promptly of any regulations that, in your view, impact critical health and safety functions of the agency and therefore should be also excluded from the directives in paragraphs 1-3. The Director will review any such notifications and determine whether exception is appropriate under the circumstances.
6. Continue in all instances to comply with Executive Order 12866, pending our review of that order, as well as any other applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning set out in section 3(e) of Executive Order 12866. That is, this plan covers "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."

This regulatory review will be implemented by the Director or Acting Director of the OMB. Communications regarding exceptions to the review, or questions regarding the review generally, should be addressed to that individual.

Finally, in the interest of sound regulatory practice and the avoidance of costly, burdensome, or unnecessary regulation, independent agencies are encouraged to participate voluntarily in this review.

This memorandum shall be published in the Federal Register.